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Preventing Employment Discrimination Against Lesbian, Gay, Bisexual or Transgender Workers

Employment discrimination is illegal. Discrimination occurs when you are being treated differently than others (or are harassed) **because of** your race, color, national origin, sex, pregnancy, religion, age, disability, or genetic information. It is also against the law for an employer to retaliate against you because you report discrimination against you or on behalf of others.

Although Title VII of the Civil Rights Act of 1964 does not explicitly include sexual orientation or gender identity, the EEOC and courts have said that **sex discrimination** includes discrimination based on an applicant or employee's gender identity or sexual orientation. For example, it is illegal for an employer to deny employment opportunities or permit harassment because:

- A woman does not dress or talk in a feminine manner.
- A man dresses in an effeminate manner or enjoys a pastime (like crocheting) that is associated with women.
- A female employee dates women instead of men.
- A male employee plans to marry a man.
- An employee is planning or has made a gender transition from female to male or male to female.

Who is protected?

Title VII applies to all private sector and state/local government employers with at least 15 employees. Note: State or local laws in your jurisdiction also may explicitly prohibit employment discrimination based on sexual orientation or gender identity.

Applicants and civilian employees of federal government agencies also have rights against LGBT discrimination under Title VII, and also Executive Order 11478, as amended.

Discrimination against an individual because that person is **transgender**, is by definition discrimination based on sex, and violates Title VII. *Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012) (transgender discrimination is sex discrimination in

violation of Title VII because it involves non-conformance with gender norms and stereotypes, or based on a plain interpretation of the statutory language prohibiting discrimination because of sex); *Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395 (March 27, 2015) (Title VII is violated where an employer denies an employee equal access to a common restroom corresponding to the employee's gender identity, or harasses an employee because of a gender transition, such as by intentionally and persistently failing to use the name and gender pronoun corresponding to the employee's gender identity as communicated to management and employees).

Discrimination based on **sexual orientation** also necessarily states a claim of sex discrimination under Title VII because (1) it literally involves treating an applicant or employee differently based on his or her sex, (2) it takes sex into account by treating him or her differently for associating with a person of the same sex, and, (3) it involves discrimination based on gender stereotypes -- employer beliefs about the person to whom the employee should be attracted because of the employee's sex. *Baldwin v. Dep't of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015). Examples of sex discrimination involving sexual orientation include:

- Denying an employee a promotion because he is gay or straight.
- Discriminating in terms, conditions, or privileges of employment, such as by providing a lower salary to an employee because of sexual orientation, or denying spousal health insurance benefits to a female employee because her legal spouse is a woman, while providing spousal health insurance to a male employee whose legal spouse is a woman.
- Harassing an employee because of his or her sexual orientation, for example, by derogatory terms, sexually oriented comments, or disparaging remarks for associating with a person of the same or opposite sex.

It also violates Title VII to discriminate against or harass an employee because of his or her sexual orientation or gender identity in combination with another unlawful reason, for example, on the basis of transgender status and race, or sexual orientation and disability.

How Do I Report Workplace Discrimination?

Employees or applicants of a private company, state government, or local

municipality: EEOC will investigate complaints of employment discrimination, harassment and retaliation and may act to stop it and seek remedies on your behalf for free. We accept complaints from job applicants, employees (full-time, part-time, seasonal and temporary), and former employees. Regardless of your citizenship and work authorization status, the law still protects you. Complaints may be filed by mail or in person at the nearest EEOC office. Visit www.eeoc.gov to find out more about laws against employment discrimination. In some cases, you have 180 days to file a complaint. In others, you have 300 days. Call us immediately if you believe you experienced discrimination.

Federal government applicants and employees should contact their agency EEO office within 45 days of experiencing discrimination to pursue a Title VII claim. Federal employees also may have rights to pursue claims in internal processes governed by E.O. 11478.

The Equal Employment Opportunity Commission is the federal agency that enforces laws against employment discrimination, harassment and retaliation. We have offices around the country that can help you. We can explain whether the situation you face

is lawful or unlawful.

Contact Us!

Call 1-800-
669-4000

You can ask for translation
assistance.

Our mission is to stop and remedy unlawful employment discrimination.

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